

Amendment No. 1 to SB2851

Beavers
Signature of Sponsor

FILED

Date _____

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Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2851*

House Bill No. 3654

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 25, is amended by adding the following as an appropriately numbered section:

Section 66-25-117.

(a) If the owner of any real property situated in this state has reasonable grounds to believe that a wrongful lien has been filed against such real property, the owner may send a written request to the holder of such lien to file a release in the register's office in the county where the property is located. The holder of such lien shall have sixty (60) days in which to:

- (1) File a release as provided in § 66-25-101;
- (2) Provide the owner evidence of a valid lien against the property;
- (3) Otherwise provide grounds for objecting to the release; or
- (4) Provide the name and address of the assignee or successor in

interest to the apparent lien holder if any is known.

(b) The written request to the holder shall be sent by United States Postal Service with first class postage paid or with a commercially reasonable delivery service with the cost of delivery provided, properly addressed to the holder's mailing address in the instrument evidencing the lien and shall include the following:

- (1) The name and address of the owner of the property, including the name and address of the owner's agent or attorney, if applicable;

(2) Identification of the wrongful lien for which release is sought, including but not limited to:

- (A) A copy of all documents evidencing the lien;
- (B) The county and state of recording;
- (C) The book and page where the lien is recorded; and
- (D) A legal description of the property, if necessary, for proper recording of the release;

(3) An affidavit by the owner, under oath, that a wrongful lien has been filed against the owner's real property; or

(4) A copy of satisfactory evidence showing a wrongful lien, which may include an affidavit or any other evidence which tends to prove that allegation of wrongful lien; and

(5) The name and address of the register's office in the county where the property is located where the release is to be filed.

(c) If the holder of such lien does not respond to the owner as provided in subsection (a) within sixty (60) days, the owner may petition a general sessions court or court of record to file an order of release.

(d) In any petition to a court for an order of release, the petitioner shall provide satisfactory evidence stating a cause of action showing a wrongful lien, which may include an affidavit, copy of the lien, or any other evidence which tends to prove that allegation of wrongful lien.

(e)

(1) In the event the petitioner is successful in a suit instituted to secure a release of a wrongful lien under this part, the petitioner may recover from the holder actual damages for failure to timely respond, all reasonable expenses, attorney fees and court costs incurred in the action. Punitive damages may also be awarded but only if the wrongful

lien was filed with the intent to cause harm or harassment to the owner of the property.

(2) In the event the petitioner is not successful in the suit, or the lien is not a wrongful lien as defined in subsection (f), the holder may recover from the petitioner all reasonable expenses, attorney fees and court costs incurred in the action.

(f) As used in this part, "wrongful lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien which is filed, made, perfected or recorded against a person's property and the lienor had no legal interest or right provided for by law in the person's property. Wrongful lien shall also include a lien that is misfiled or wrongly recorded due to a clerical or typographical error.

(g) Any defendant to a suit instituted under this part, may counterclaim against any third party responsible for such wrongful lien defined in subsection (f) and may be entitled to recover actual damages, including all reasonable expenses, attorney fees and court costs incurred in the action.

(h) No settlement agent or attorney may take an assignment of the right to any penalties, damages, expenses, or attorney fees permitted under this part.

(i) The provisions of this section are intended to provide an alternative means to secure the release of a wrongful lien; however, this section shall not:

(1) Prevent or limit any other remedy otherwise provided by law to quiet title or recover damages for a wrongful lien; or

(2) Permit the provisions of this section to be used for any other purpose than securing the release of a wrongful lien.

SECTION 2. This act shall take effect on July 1, 2008, the public welfare requiring it.